

notice of the open season is given within which to submit requests for transportation services. No bid shall be rejected because a prospective shipper has submitted another bid in another open season conducted under this subpart.

(2) A prospective applicant must consider any bids tendered after the expiration of the open season by qualifying bidders and may reject them only if they cannot be accommodated due to economic, engineering, design, capacity or operational constraints, or accommodating the request would otherwise adversely impact the timely development of the project, and a detailed explanation must accompany the rejection. Any bids tendered after the expiration of the open season must contain a good faith showing, including a statement of the circumstances which prevented the late bidder from tendering a timely bid and how those circumstances have changed. If a prospective applicant determines at any time that, based on the criteria stated in this paragraph, no further late bids for capacity can be accommodated, it may request Commission approval to summarily reject any further requests.

(3) Within 10 days after precedent agreements have been executed for capacity allocated in the open season, the prospective applicant shall make public on the Internet and through press releases the results of the open season, at least including the name of the prospective shipper, amount of capacity awarded, and term of agreement.

(4) Within 20 days after precedent agreements have been executed for capacity allocated in the open season, the prospective applicant must submit copies of all such precedent agreements to the Commission and copies of any relevant correspondence with bidders for capacity who were not allocated capacity that identifies why such bids were not accepted (all documents identified in this paragraph (d)(4) may be filed seeking privileged treatment pursuant to § 388.112 of this chapter.

[Order 2005, 70 FR 8286, Feb. 18, 2005, as amended by Order 2005–A, 70 FR 35026, June 16, 2005; 75 FR 15342, Mar. 29, 2010; Order 769, 77 FR 65475, Oct. 29, 2012]

§ 157.35 Undue discrimination or preference.

(a) All binding open seasons shall be conducted without undue discrimination or preference in the rates, terms or conditions of service and all capacity allocated as a result of any open season shall be awarded without undue discrimination or preference of any kind.

(b) Any complaint filed pursuant to § 385.206 of this chapter alleging non-compliance with any of the requirements of this subpart shall be processed under the Commission's Fast Track Processing procedures contained in § 385.206(h).

(c) Each prospective applicant conducting an open season under this subpart must function independent of the other divisions of the prospective applicant as well as the prospective applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) and (c) of the Commission's regulations, except that the exemption in § 358.3(c)(2)(iii) shall not apply. In instances in which the prospective applicant is not an entity created specifically to conduct an open season under this subpart, the prospective applicant must create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the project applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) of this chapter, except that the exemption in § 358.3(c)(2)(iii) shall not apply.

(d) Each project applicant conducting an open season under this subpart that is not otherwise subject to the provisions of part 358 of this chapter must comply with the following sections of that part: §§ 358.4(c) and (d), 358.5, 358.6, 358.7(a), (b), and (c), and 358.8 (b) and (c) of this chapter.

[Order 2005, 70 FR 8286, Feb. 18, 2005, as amended by Order 2005–A, 70 FR 35026, June 16, 2005; 75 FR 15342, Mar. 29, 2010]

§ 157.36 Open seasons for expansions.

Any open season for capacity exceeding the initial capacity of an Alaska natural gas transportation project must provide the opportunity for the transportation of gas other than

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Prudhoe Bay or Point Thomson production. In considering a proposed voluntary expansion of an Alaska natural gas pipeline project, the Commission will consider the extent to which the expansion will be utilized by shippers other than those who are the initial shippers on the project and, in order to promote competition and open access to the project, may require design changes to ensure that some portion of the expansion capacity be allocated to new shippers willing to sign long-term firm transportation contracts, including shippers seeking to transport natural gas from areas other than Prudhoe Bay and Point Thomson.

[Order 2005–A, 70 FR 35026, June 16, 2005]

§ 157.37 Project design.

In reviewing any application for an Alaska natural gas pipeline project, the Commission will consider the extent to which a proposed project has been designed to accommodate the needs of shippers who have made conforming bids during an open season, as well as the extent to which the project can accommodate low-cost expansion, and may require changes in project design necessary to promote competition and offer a reasonable opportunity for access to the project.

[Order 2005, 70 FR 8286, Feb. 18, 2005; Order 756, 77 FR 4894, Feb. 1, 2012]

§ 157.38 Pre-approval procedures.

No later than 90 days prior to providing the notice of open season required by §157.34(a), a prospective applicant must file, for Commission approval, a detailed plan for conducting an open season in conformance with this subpart. The prospective applicant's plan shall include the proposed notice of open season. Upon receipt of a request for such a determination, the Secretary of the Commission shall issue a notice of the request, which will then be published in the FEDERAL REGISTER. The notice shall establish a date on which comments from interested persons are due and a date, which shall be within 60 days of receipt of the prospective applicant's request unless otherwise directed by the Commission, by

which the Commission will act on the proposed plan.

[Order 2005–A, 70 FR 35026, June 16, 2005]

§ 157.39 Rate treatment of pipeline expansions.

There shall be a rebuttable presumption that rates for any expansion of an Alaska natural gas transportation project shall be determined on a rolled-in basis.

Subpart C [Reserved]

Subpart D—Exemption of Natural Gas Service for Drilling, Testing, or Purging from Certificate Requirements

AUTHORITY: Natural Gas Act, as amended, 15 U.S.C. 717 *et. seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et. seq.*, Federal Energy Administration Act, 15 U.S.C. 761 *et. seq.*, Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95–91, E.O. 12009, 42 FR 46267.

§ 157.53 Testing.

(a) Construction and operation of facilities necessary to render direct natural gas service for use in the testing and purging of new natural gas pipeline facilities are exempted from the certificate requirements of section 7(c) of the Natural Gas Act, when the construction and operation of such facilities are conducted in accordance with paragraph (b) of this section.

(b) Operations undertaken to render direct natural gas service shall be terminated upon the completion of the purging or testing of the pipeline facilities. Persons undertaking any construction or operation of facilities or service under this section shall file an original and two copies of an annual statement, by February 1 of each year, describing their activities hereunder.

[43 FR 56544, Dec. 1, 1978, as amended at 60 FR 53065, Oct. 11, 1995]

Subpart E [Reserved]